



396.43260X00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: K. TANAKA, et al.
Serial No: 10/701,440
Filed: November 6, 2003
Title: PRODUCTION METHOD OF POLYAMIDE

PETITION UNDER 37 C.F.R. § 1.53(e)

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

March 26, 2004

Sir:

Pursuant to the provisions of 37 C.F.R. §1.53(e), and in response to the Notice of Incomplete Nonprovisional Application mailed February 4, 2004, Applicants respectfully petition the Director to accept the application papers for the above-identified application filed on November 6, 2003, as complete; and, in particular, respectfully petition the Director to hold that the drawings are not necessary under 35 U.S.C. §113, first sentence, for the above-identified application, such that the application papers as filed on November 6, 2003, are in fact complete as filed on November 6, 2003, and should be granted an actual filing date of November 6, 2003.

FACTS

On November 6, 2003, in the U.S. Patent and Trademark Office, nonprovisional application papers were filed that included 42 pages of specification (including an Abstract and 5 pages of claims containing claims 1-28). No drawings were submitted with the application papers on November 6, 2003. All of the claims submitted (claims 1-28) were directed to a production method of polyamide by batch melt polymerization, including recited steps.

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On page 9 of the specification as filed, a section entitled "BRIEF DESCRIPTION OF THE DRAWINGS" was set forth, including a description of Figs. 1 and 2. These Figs. 1 and 2 were described as, respectively, a graph showing one example of the relationship between the melt viscosity and the mole balance of polyamide under melt polymerization; and a graph showing the measured results of relative viscosity of solid phase-polymerized polyamide. These drawing figures were also discussed in the paragraph bridging pages 11 and 12 and the first full paragraph on page 12, of Applicants' specification as filed; as well as on page 33, line 20 and page 34, line 21, of the specification as filed.

On February 4, 2004, a Notice of Incomplete Nonprovisional Application (Filed Under 37 C.F.R. §1.53(b)) was issued in connection with the above-identified application. This Notice issued February 4, 2004, set forth that a filing date had not been accorded to the above-identified application papers, in that the application was deposited without drawings, and that 35 U.S.C. §113 (first sentence) requires a drawing "where necessary for the understanding of the subject matter sought to be patented". This Notice mailed February 4, 2004, also suggested that Applicants "should reconsider whether the drawings are necessary under 35 U.S.C. 113 (first sentence)".

In view of this Notice mailed February 4, 2004, and upon consideration of whether the drawings are necessary, this Petition follows, being submitted on the basis that Figs. 1 and 2 are not necessary under 35 U.S.C. § 113.

ARGUMENTS

This Petition is being submitted less than two months subsequent to the mailing date of the aforementioned Notice of Incomplete Nonprovisional Application. Note the two-month period for response to the Notice mailed February 4, 2004, set in such Notice. See also 37 C.F.R. §1.181(f). Accordingly, it is respectfully submitted that the Petition is clearly timely.

As will be shown in the following, it is respectfully submitted that a drawing is not required for a filing date under 35 U.S.C. §113 (first paragraph), for the above-identified application.

Attention is respectfully directed to the following from Manual of Patent Examining Procedure 608.02, at page 86 of Chapter 600:

“A drawing is not required for a filing date under 35 U.S.C.

§111 and 113 if the application contains:

(A) at least one process claim including the term

“process” or “method” in its introductory phrase....”

As can be appreciated, all of the claims in the above-identified application, claims 1-28, are directed to a production “method” of polyamide by batch melt polymerization. For this reason alone, it is respectfully submitted that a drawing is not required; and that, for this reason alone, the above-identified application should be given a filing date of November 6, 2003.

As described in Applicants' specification, Fig. 1 is a graph showing one example of the relationship between the melt viscosity and the mole balance of polyamide under melt polymerization, and Fig. 2 is a graph showing the measured results of relative viscosity of solid phase-polymerized polyamide. In the detailed description of the invention, Fig. 2 is referred to together with reference to Table 5

(see the sole full paragraph on page 33, and the sole full paragraph on page 34, of Applicants' specification), Table 5 being set forth bridging pages 34 and 35 of Applicants' specification. Clearly, Fig. 2 is not necessary under 35 U.S.C. §113 (first sentence).

Moreover, in the detailed description on pages 11 and 12 of Applicants' specification, Fig. 1 is described as showing the results of simulating the direct polymerization by adding m-xylylene diamine to molten adipic acid under atmospheric pressure. As can especially be seen in the sole full paragraph on page 12 of the Applicants' specification, reference to Fig. 1 can be deleted while still providing a complete description of the present invention. In this regard, note that Equation A is set forth in this sole full paragraph on page 12 of Applicants' specification; however, it is respectfully submitted that this Equation A is set forth without any need for being based on Fig. 1; and that, clearly, Fig. 1 is not necessary under 35 U.S.C. §113 (first sentence) and, accordingly, is not necessary for a filing date.

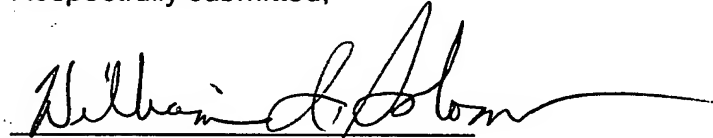
In addition, attention is respectfully directed to the concurrently filed Preliminary Amendment in connection with the above-identified application, which deletes all reference to Figs. 1 and 2 (which were the sole drawing figures referred to in the application papers for the above-identified application as originally filed). This shows that all reference to Figs. 1 and 2 can be deleted from Applicants' specification, and Figs. 1 and 2 omitted from Applicants' disclosure, and the application still provides a complete disclosure of the present invention.

Enclosed herewith is the necessary fee under 37 CFR § 1.17(h), for this Petition.

In view of all of the foregoing, granting of the present Petition; with reconsideration and granting the above-identified application a filing date of November 6, 2003, in due course, are respectfully requested.

To the extent necessary, Applicants petition for an extension of time under 37 CFR §1.136. Please charge any shortage in the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 01-2135 (Case No. 396.43260X00) and please credit any excess fees to such deposit account.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William I. Solomon", with a long horizontal flourish extending to the right.

William I. Solomon
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ANTONELLI, TERRY, STOUT & KRAUS, LLP

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